

OGC 78-3005

28 April 1978

OLC #78-4778
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MEMORANDUM FOR:
FROM :
Office of General Counsel

SUBJECT : CIA and the Civil Service Reform Bill

REFERENCE : OLC Letter to the Office of Management and Budget
(OLC 78-0487/d), dated 25 April 1978

1. The purpose of this memorandum is to inform you that the Office of General Counsel regards sections of the referenced views letter as erroneous and to suggest that needed action be taken.

2. As an addendum to an earlier views letter, the referenced views letter was designed to modify sections of that earlier views letter which misconstrue certain provisions of the Civil Service Reform Bill. However, several changes were made in the draft letter after coordination which we feel could seriously compromise our efforts to obtain a complete exemption from the bill. These changes consist of misstatements and omissions which could affect the report that the Civil Service Commission (CSC) is presently preparing on the extent to which it believes CIA should be exempt from the bill. Moreover, in our opinion, the changes will indicate to CSC a lack of understanding of the bill.

3. The first changes appear on page 1, paragraph 2 of the referenced views letter. This paragraph misstates our view as to the scope of the bill in general, and the scope of Subchapter II in particular. Our position is that the bill is not "a comprehensive codification of Federal personnel systems, including the status of exempted (sic) agencies." Though the bill is designed to alter many aspects of the Federal civil service, it does not attempt the "comprehensive codification" of excepted (not exempted) personnel systems.

4. Furthermore, while Subchapter II amends certain provisions of Title 5 of the U.S. Code which affect the treatment of preference eligibles in the Executive branch, the referenced views letter incorrectly implies that Subchapter II is only applicable to the competitive service. Still, notwithstanding the applicability of Title 5 and the Subchapter II amendments to both the competitive and excepted service, the language of the statute which is the authority for the Agency's excepted

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personnel system, 50 U.S.C. 403j, is so broad that it has been consistently interpreted as exempting us from all laws regarding preference eligibles. CSC has acknowledged our exemption from laws regarding preference eligibles in the excepted service, but has requested that the Agency state the nature of our exemption for the record. Accordingly, the coordinated draft letter stated that the language of 50 U.S.C. 403j would continue to exempt the Agency from laws regarding preference eligibles, including the provisions of Subchapter II. By recommending a specific exemption from Subchapter II, the referenced views letter needlessly raises the question of whether we really have the exemption we have already claimed we have.

5. At page 1, paragraph 3, the referenced views letter goes on to distort our concerns over the adjudication and appeals authority of the Merit Systems Protection Board (Merit Board). The coordinated draft letter stated for the record, at the request of CSC, that our exemptions from CSC adjudication and appeals authority will remain in effect when the CSC is succeeded by the Merit Board. However, the coordinated draft letter also noted that new rights of appeal are created by the bill, thus, a complete exemption for the Agency from the bill would be required. The referenced views letter is unclear on the question of whether our exemptions from CSC adjudication and appeals authority would remain in effect. Also, the referenced views letter concludes by stating that because the bill creates new rights of appeal to the Merit Board, "we require an exemption from each title of the bill" (emphasis added). This is simply incorrect because appeal rights affecting the Agency are not found in each title of the bill.

6. Finally, on page 2 of the referenced views letter there is a sentence that was between paragraph 1 and paragraph 2 which has been omitted. This sentence provided much of the basis for our objections to the concept of a subsection (c) exemption at section 3132. The sentence stated that even if the Agency was exempted by subsection (c), it would be required to make its personnel system conform to the Senior Executive Service as much as possible. It is clear that the proposed Office of Personnel Management (OPM) would have to monitor our personnel system to police this requirement and that it is the disregard of this requirement, as detected by OPM, which would serve as one of the major grounds for OPM recommending a revocation of a subsection (c) exemption held by the Agency.

7. In conclusion, since the changes which have been made in the coordinated draft letter might be harmful to our chances of securing a complete exemption from the bill, we suggest that appropriate action be taken to clarify the Agency's position in this matter.

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